nary point. Mr. Atma Singh submitted that despite this provision the court is not precluded from reviewing the decision of the minister. He referred to the following passage in *Groves* on the Constitution of Malaysia at page 159:—

"Section 2 of part III of the Second Schedule states that a decision of the Federal Government in connection with citizenship shall not be subject to appeal or review in any court. Since such a pronouncement has limited meaning in connection with deprivation of citizenship and could also not apply to those whose claim of citizenship is by operation of law, for an executive determination cannot be conclusive of a vested right, the provision must be directed towards the decisions of government on applications for citizenship, the relevant articles themselves placing discretion in government or empowering government to make a substantial number of subjective conclusions, such as those determining 'good character'."

He also cited the case of *Lim Lian Geok* v. *The Minister of Interior, Federation of Malaya.*[1] In that case the Minister had not yet made any order. On receipt of the notice under article 27, the applicant obtained an order *nisi* prohibiting the Minister from holding the inquiry. The order was later discharged.

In the present case, notice was given to the applicant informing him of the ground on which the order was proposed to be made and of his right to have his case referred to a committee of inquiry. He failed to ask for such a reference and in the result the Minister made the order. On the failure of the applicant to ask for an inquiry the Minister could, but was not obliged, to hold an inquiry.

The order is now challenged in this application. It is said that this order cannot now be questioned in any court. The court has, however, by means of orders of *mandamus*, prohibition and *certiorari* jurisdiction to control inferior courts and other persons and bodies having legal authority to determine questions affecting the rights of subjects and having the duty to act judicially — see *R.* v. *Electricity Commissioners,*[2] pages 204, 205. And where no right of appeal to the courts exists, the order of *certiorari* forms the principal means by which the determination of these tribunals and other persons and bodies can be brought before the court — see *Halsbury*, 3rd Ed., vol. 11, page 53.

The words in section 2 of the said Schedule "The decision . . . . shall not be subject to appeal or review" would appear to mean that it is final.

In *Re Gilmore* [3] at page 801, Denning L.J. said:—

"The word 'final' is not enough. That only means 'without appeal'. It does not mean 'without recourse to *certiorari*'. It makes the decision final on the facts, but not final on the law . . . . *Certiorari* can still issue for excess of jurisdiction or for error of law on the face of the record."

It would therefore appear that as a means of questioning the action of the respondent, the applicant should have applied for an order of *certiorari*. There is no provision relating to the procedure of *certiorari* in our Rules of the Supreme Court or in any written law, so recourse must be had to Order 72 rule 2 of the rules which reads:—

"Where no other provision is made by any written law or these rules, the present procedure and practice in England or in Malaya remain in force".

The relief sought in this application is two-fold:—

(1) An order setting aside the said expulsion order;

(2) An order setting aside the deprivation order.

Under section 10 of the Banishment Ordinance, 1959, the person against whom a banishment order is made could apply to the High Court to have it set aside and proceed by way of a miscellaneous criminal application. But there could be no application for an order of *certiorari* without leave of the court. (See English Order 59 rule 3). In this case no such leave was obtained.

The application as it stands is therefore not in proper form and is dismissed with costs, but without prejudice to a fresh application.

*Application dismissed.*

Solicitors: *Atma Singh Gill / Co.*

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## MAJID v. MUTHUSWAMY

**[F.C. (Wee Chong Jin C.J., Tan Ah Tah F.J. and Winslow J.) August 13, 1968]**

**[Singapore — Federal Court Civil Appeal No. Y 44 of 1967]**

*Advocate and Solicitor — Negligence — Professional negligence — Liability for.*

In Singapore an advocate and solicitor can be sued for professional negligence where the act complained of is an act done in his capacity of a solicitor but will not be liable for negligence if the act complained of is done in his capacity as an advocate.

**[Editorial Note:** We would draw the attention of our readers to the article by Mr. G. Starforth Hill on "The Liability of an Advocate and Solicitor for Negligence in the Course of his Professional Duties" appearing at p. xvi *ante*.]

*Case referred to:—*

(1) *Rondel* v. *Worsley* [1967] 3 All E.R. 993, H.L.

FEDERAL COURT.

*N. N. Leicester* for the appellant.

*L. A. J. Smith* for the respondent.

*G. Starforth Hill* as *amicus curiae.*

Wee Chong Jin C.J. (delivering oral judgment of the court): The claim is for damages for negligence on the part of a deceased solicitor by a client in relation to three court proceedings but in respect of two of the three court proceedings, it is clear they disclose no cause of action because the statement of claim not only

does not allege that the deceased solicitor was the solicitor of the present plaintiff in those two actions but clearly states that the deceased solicitor was appearing in those two actions as solicitor for a trade union, namely, the Malayan National Seamen's Union. As regards the third proceedings, namely, the bankruptcy petition, which resulted in the plaintiff being adjudicated a bankrupt, the statement of claim discloses, on the face of it, no allegation of negligence on the part of the solicitor concerned.

An attempt was made to amend the pleadings when we were dealing with this matter on appeal, and the draft prepared and submitted in support of the application clearly discloses that it would be an abuse of the process of the court to allow those portions of the statement of claim with the proposed amendments which relate to the bankruptcy proceedings to stand and in those circumstances the appeal must fail.

The important matter which we would have to consider, assuming that the statement of claim does disclose a cause of action for professional negligence, is whether an advocate and solicitor of the High Court of Singapore when conducting a case can be successfully sued for professional negligence. The case of *Rondel* v. *Worsley* [1] decided in the House of Lords has held that on grounds of public policy, a barrister in England is not liable for negligence, so long as the negligence alleged, arises during his conduct of a case.

There are *dicta* in that House which indicate that the same considerations would apply so far as solicitors are concerned in England. Without finally deciding the question, we are at present inclined to the view that the same considerations of public policy apply in Singapore and that therefore the decision in *Rondel's* case would apply in Singapore too.

The profession is a fused one here, and having regard to the reasons given by the Law Lords in *Rondel's* case, which we would respectfully agree with, we think that the position in Singapore could be stated thus: an advocate and solicitor can be sued for professional negligence where the act complained of is an act done in his capacity of a solicitor but will not be liable for negligence if the act complained of is done in his capacity as an advocate. That broadly is our view at the present and accordingly we would dismiss the appeal against the order of Mr. Justice Chua with costs.

The amount paid into court as security to enable this appeal to proceed will be paid out to the respondent or her solicitors and lastly we wish to express our indebtedness to Mr. Graham Hill as *amicus curiae* who has been of great assistance to us in forming our views as to the position of advocates and solicitors of the High Court in relation to actions against them for professional negligence.

*Appeal dismissed.*